

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LEONARD GRUNSTEIN, JACK DWYER, and  
CAPITAL FUNDING GROUP, INC.,

Plaintiffs,

--against--

RONALD E. SILVA; PEARL SENIOR CARE, LLC;  
PSC SUB, LLC; GEARY PROPERTY HOLDINGS, LLC;  
FILLMORE CAPITAL PARTNERS, LLC; FILLMORE  
STRATEGIC INVESTORS, LLC; DRUMM  
INVESTORS, LLC; and FILLMORE STRATEGIC  
MANAGEMENT, LLC.

Defendants.  
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07 Civ. 3712 (RMB) (RLE)

**DECLARATION OF  
ERIC C. KIRSCH**

Eric C. Kirsch declares pursuant to 28 U.S.C. section 1746 as follows:

1. I am an attorney duly admitted to practice before this Court. I am an associate with Dechert LLP, counsel for defendants Ronald E. Silva; Pearl Senior Care, LLC; PSC Sub, LLC; Geary Property Holdings, LLC; Fillmore Capital Partners, LLC; Fillmore Strategic Investors, LLC; Drumm Investors, LLC; and Fillmore Strategic Management, LLC.

2. I respectfully submit this affirmation in support of the motion of defendants Ronald E. Silva; Pearl Senior Care, LLC; PSC Sub, LLC; Geary Property Holdings, LLC; Fillmore Capital Partners, LLC; Fillmore Strategic Investors, LLC; Drumm Investors, LLC; and Fillmore Strategic Management, LLC to dismiss the Amended Complaint in order to place before the Court documents referenced in the accompanying Memorandum of Law of the Defendants in Support of Their Motion to Dismiss.

3. Attached hereto as Exhibit A is a true and correct copy of the opinion of the Delaware Court of Chancery in *MetCap Securities LLC v. Pearl Senior Care, Inc.*, 2007 Del. Ch. LEXIS 65 (May 16, 2007).

4. Attached hereto as Exhibit B is a true and correct copy excepts of the Execution Version of the Agreement and Plan of Merger by and among NASC Acquisition Corp., Beverly Enterprises, Inc. and SBEV Property Holdings LLC, Dated as of August 16, 2005.

5. Attached hereto as Exhibit C is a true and correct copy of the Third Amendment, Dated November 20, 2005 to the Agreement of Plan and Merger by and among NASC Acquisition Corp., Beverly Enterprises, Inc. and SBEV Property Holdings LLC.

6. Attached hereto as Exhibit D is a true and correct copy of the March 20, 2006 Complaint in *MetCap Securities LLC v. Pearl Senior Care, Inc.* (New York Supreme Court Index No. 06-600964).

7. Attached hereto as Exhibit E is a true and correct copy of Declaration of John W. Dwyer executed on April 5, 2006.

8. Attached hereto as Exhibit F is a true and correct copy of transcript of the April 6, 2006 hearing on MetCap's Motion for Attachment in the United States District Court for the Southern District of New York.

9. Attached hereto as Exhibit G is a true and correct copy of the Supplemental Declaration of Leonard Grunstein executed on April 5, 2006.

10. Attached hereto as Exhibit H is a true and correct copy of the First Amended Complaint in *MetCap Securities LLC v. Pearl Senior Care, Inc.* (Del. Ch. filed Aug. 24, 2006).

11. Attached hereto as Exhibit I is a true and correct copy of the order denying MetCap's Motion for Reargument in *MetCap Securities LLC v. Pearl Senior Care, Inc.*, 2007 Del. Ch. LEXIS 92 (June 29, 2007).

12. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

13. Executed on August 29, 2007 at New York, New York.

  
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ERIC C. KIRSCH